

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RICHARD PORTER,
Petitioner,
v.
WARDEN, USP-ATWATER,
Respondent.

Case No. 1:22-cv-00573-CDB (HC)

ORDER DENYING PETITIONER'S
MISCELLANEOUS MOTIONS

(Docs. 11, 13)

ORDER DIRECTING CLERK OF
COURT TO FORWARD TO
PETITIONER A COPY OF
RESPONDENT'S MOTION TO
DISMISS AND APPENDIX

ORDER DIRECTING PETITIONER TO
RESPOND

21-DAY DEADLINE

Petitioner Richard Porter is a federal prisoner proceeding pro se and *in forma pauperis* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241.

On August 29, 2022, the previously assigned magistrate judge ordered Respondent to file a response to the petition within 60 days. (Doc. 6). Thereafter, on October 28, 2022, Respondent timely filed a motion to dismiss. (Doc. 9). The motion to dismiss is accompanied by a certificate of service in which Respondent attests that the motion to dismiss and appendix were mailed to Petitioner on October 28, 2022. Pursuant to the scheduling order (Doc. 6),

Petitioner's opposition to the motion to dismiss, if any, was required to be filed within 21 days of service of the motion.

Petitioner has not filed an opposition to Respondent's motion to dismiss. Instead, on November 17, 2022, Petitioner filed a "Motion for Merits Ruling ... Based on Respondent's Failure to Respond in a Timely Manner." (Doc. 11). From its review of that motion, it does not appear to the Court that Petitioner either received or is aware of Respondent's filing of the motion to dismiss. Most recently, on August 28, 2023, Petitioner filed a "Motion to Compel Judgment" that similarly evinces Petitioner may not have or otherwise be aware of Respondent's motion to dismiss.

Accordingly, the Court will (1) direct the Clerk of Court to forward to Petitioner a copy of Respondent's motion to dismiss and appendix, and (2) order Petitioner to file an opposition or statement of non-opposition to the motion to dismiss within 21-days of entry of this Order.

Separately, Petitioner is advised that the Eastern District is one of the busiest courts in the country and remains under a judicial emergency. Petitioner is further informed that the matter has been referred to a United States magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302. Because of judicial vacancies, different district judges and magistrate judges have been assigned to this case. The current magistrate judge was assigned to this action in October 2022, immediately following his appointment to the position. Respondent's Motion to Dismiss will be resolved as soon as is practicable given the Court's extraordinary workload.

Accordingly, it is hereby ORDERED:

1. Petitioner's Motion for Merits Ruling (Doc.11) and Motion to Compel (Doc. 13) are denied as premature;
2. The Clerk of Court is directed to forward to Petitioner a copy of Respondent's motion to dismiss (Doc. 9) and appendix (Doc. 9-1); and

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3. Respondent shall respond to the motion to dismiss within 21 days of the date of this order.

IT IS SO ORDERED.

Dated: August 29, 2023


UNITED STATES MAGISTRATE JUDGE